

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA MICHL,

Plaintiff,

v.

COUNTY OF BUTTE, et al.,

Defendants.

No. 2:22-cv-0689 KJN P

ORDER

Plaintiff is a pretrial detainee, currently housed in the Butte County Jail, proceeding without counsel. Plaintiff seeks relief pursuant to 42 U.S.C. § 1983, and requested leave to proceed in forma pauperis pursuant to 28 U.S.C. § 1915. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a). Accordingly, the request to proceed in forma pauperis is granted.

Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By this order, plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff is obligated to make monthly payments of twenty percent of the preceding month's income credited to plaintiff's trust account. These

1 payments will be forwarded by the appropriate agency to the Clerk of the Court each time the
 2 amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C.
 3 § 1915(b)(2).

4 Screening Standards

5 The court is required to screen complaints brought by prisoners seeking relief against a
 6 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The
 7 court must dismiss a complaint or portion thereof if the prisoner raised claims that are legally
 8 "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek
 9 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1), (2).

10 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.
 11 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th
 12 Cir. 1984). The court may, therefore, dismiss a claim as frivolous when it is based on an
 13 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,
 14 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully
 15 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th
 16 Cir. 1989), superseded by statute as stated in Lopez v. Smith, 203 F.3d 1122, 1130-31 (9th Cir.
 17 2000) ("[A] judge may dismiss [in forma pauperis] claims which are based on indisputably
 18 meritless legal theories or whose factual contentions are clearly baseless."); Franklin, 745 F.2d at
 19 1227.

20 Rule 8(a)(2) of the Federal Rules of Civil Procedure "requires only 'a short and plain
 21 statement of the claim showing that the pleader is entitled to relief,' in order to 'give the
 22 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Bell Atlantic
 23 Corp. v. Twombly, 550 U.S. 544, 555 (2007) (quoting Conley v. Gibson, 355 U.S. 41, 47 (1957)).
 24 In order to survive dismissal for failure to state a claim, a complaint must contain more than "a
 25 formulaic recitation of the elements of a cause of action;" it must contain factual allegations
 26 sufficient "to raise a right to relief above the speculative level." Bell Atlantic, 550 U.S. at 555.
 27 However, "[s]pecific facts are not necessary; the statement [of facts] need only 'give the
 28 defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" Erickson v.

1 Pardus, 551 U.S. 89, 93 (2007) (quoting Bell Atlantic, 550 U.S. at 555, citations and internal
2 quotations marks omitted). In reviewing a complaint under this standard, the court must accept as
3 true the allegations of the complaint in question, Erickson, 551 U.S. at 93, and construe the
4 pleading in the light most favorable to the plaintiff. Scheuer v. Rhodes, 416 U.S. 232, 236
5 (1974), overruled on other grounds, Davis v. Scherer, 468 U.S. 183 (1984).

6 Plaintiff's Complaint

7 In his first claim, plaintiff alleges that he was arrested by the Butte County Sheriff, jailed
8 and denied any form of constitutional due process. He claims he was not provided an
9 arraignment, or a preliminary examination hearing to establish probable cause or confront
10 witnesses.

11 In his second claim, plaintiff alleges that while housed in the Butte County Jail, he
12 reported being assaulted by other inmates at least six times, and suffered injuries to his body and
13 face requiring medical treatment. Plaintiff claims he was forced to share a cell with a mentally ill
14 inmate who ate feces out of the toilet; after plaintiff complained for two months, the cellmate
15 assaulted plaintiff and the cellmate was moved. Plaintiff claims he suffered "reprehensible
16 conditions" by county jail personnel who were deliberately indifferent to plaintiff's personal
17 safety and human rights. As a result, plaintiff now suffers from post-traumatic stress disorder.

18 Plaintiff's third claim alleges he was misdiagnosed as mentally incompetent to stand trial
19 during a preliminary exam. Plaintiff complains that he was deprived of his due process right to
20 arraignment or preliminary hearing to establish probable cause to hold plaintiff for trial and was
21 instead committed under a California Penal Code Section 1370 hold to the Department of State
22 Hospitals in Napa based on "unproven allegations contained within discovery documents and
23 police reports." (ECF No. 1 at 5.)

24 Plaintiff names as defendants the County of Butte, Butte County Sheriff, Butte County
25 District Attorney, and the Butte County District Attorney.

26 Plaintiff seeks money damages, dismissal of all current criminal charges, dismissal of
27 court-ordered supervision with prejudice, and expungement of plaintiff's arrest history related to
28 this incident.

1 Discussion

2 Improper Defendants

3 Plaintiff does not set forth specific charging allegations as to the Butte County District
4 Attorney or the Butte County Public Defender. An inference is raised, however, that plaintiff
5 names the district attorney in connection with the criminal charges and alleged due process
6 violations during plaintiff's state court criminal case. In addition, it appears plaintiff may have
7 been represented by a Butte County public defender. Assuming such is the case, plaintiff cannot
8 obtain § 1983 relief against either defendant.

9 As to the Butte County District Attorney, the United States Supreme Court has held that
10 "in initiating a prosecution and in presenting the State's case, the prosecutor is immune from a
11 civil suit for damages under § 1983." Imbler v. Pachtman, 424 U.S. 409, 431 (1976). Such
12 absolute immunity applies "even if it leaves 'the genuinely wronged defendant without civil
13 redress against a prosecutor whose malicious and dishonest action deprives him of liberty.'" Ashelman v. Pope, 793 F.2d 1072, 1075 (9th Cir. 1986) (quoting Imbler, 424 U.S. at 427). Thus,
14 defendant Butte County District Attorney is immune from suit and plaintiff's claims should be
15 dismissed without leave to amend.

17 As to the Butte County Public Defender, "[t]o state a claim under § 1983, a plaintiff must
18 allege the violation of a right secured by the Constitution and laws of the United States, and must
19 show that the alleged deprivation was committed by a person acting under color of state law."
20 West v. Atkins, 487 U.S. 42, 48 (1988) (citations omitted). "[A] public defender does not act
21 under color of state law when performing a lawyer's traditional functions as counsel to a
22 defendant in a criminal proceeding." Polk Cnty. v. Dodson, 454 U.S. 312, 325 (1981). Because
23 plaintiff's allegations involve the public defender acting in the capacity as an attorney during the
24 course of criminal proceedings, the public defender was not acting under color of state law. This
25 means that plaintiff cannot bring a claim against the Butte County Public Defender under § 1983.
26 Moreover, any potential claims for legal malpractice do not come within the jurisdiction of the
27 federal courts. Franklin v. Oregon, 662 F.2d 1337, 1344 (9th Cir. 1981). Therefore, plaintiff

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cannot maintain an action against defendant Butte County Public Defender, and plaintiff's claims against such defendant should be dismissed without leave to amend.

Improper Relief

Plaintiff seeks dismissal of all charges, which if granted would result in his release from jail. As a general rule, a claim that challenges the fact or duration of a prisoner's confinement should be addressed by filing a habeas corpus petition under 28 U.S.C. § 2254, while a claim that challenges the conditions of confinement should be addressed by filing a civil rights action under 42 U.S.C. § 1983. See Preiser v. Rodriguez, 411 U.S. 475, 500 (1973); Ramirez v. Galaza, 334 F.3d 850, 858-859 (9th Cir. 2003), cert. denied, 541 U.S. 1063 (2004). Plaintiff cannot obtain release from jail or prison by filing a § 1983 action. Therefore, plaintiff's request for dismissal of all criminal charges is unavailable in this action.

First and Third Claims Barred by Younger¹

Under California law, a person who is mentally incompetent -- meaning he or she is unable to understand the nature of the criminal proceedings or assist counsel in the defense -- cannot be tried on the charged crimes.² Cal. Penal Code § 1367(a). "If the defendant is found mentally incompetent, the trial, the hearing on the alleged violation, or the judgment shall be suspended until the person becomes mentally competent." Cal. Penal Code § 1370(a)(1)(B). In other words, the criminal proceedings are suspended and the defendant receives treatment until he becomes mentally competent. Cal. Penal Code § 1370.

The Supreme Court's decision in Younger established a "strong federal policy against federal-court interference with pending state judicial proceedings absent extraordinary circumstances." King v. County of Los Angeles, 885 F.3d 548, 559 (9th Cir. 2018) (quoting

¹ Younger v. Harris, 401 U.S. 37 (1971).

² California's competency standard fully comports with federal law, as the Supreme Court has defined the competency standard "as including both (1) 'whether' the defendant has 'a rational as well as factual understanding of the proceedings against him' and (2) whether the defendant 'has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding.'" Indiana v. Edwards, 554 U.S. 164, 170 (2008) (emphasis omitted) (quoting Dusky v. United States, 362 U.S. 402 (1960) (per curiam)).

1 Middlesex County Ethics Comm. v. Garden State Bar Ass’n, c, 431 (1982)). This policy applies
 2 to both criminal and civil judicial proceedings that implicate important state interests. Id.
 3 (citation omitted).

4 Younger abstention is appropriate when the following factors are satisfied: “(1) there is
 5 an ongoing state judicial proceeding; (2) the proceeding implicate[s] important state interests;
 6 (3) there is an adequate opportunity in the state proceedings to raise constitutional challenges; and
 7 (4) the requested relief seek[s] to enjoin or has the practical effect of enjoining the ongoing state
 8 judicial proceeding.” Arevalo v. Hennessy, 882 F.3d 763, 765 (9th Cir. 2018) (citation and
 9 internal quotations omitted). But “even if Younger abstention is appropriate, federal courts do
 10 not invoke it if there is a showing of bad faith, harassment, or some other extraordinary
 11 circumstance that would make abstention inappropriate.” Page v. King, 932 F.3d 898, 902 (9th
 12 Cir. 2019) (citations and internal quotations omitted).

13 Here, it appears that plaintiff’s criminal case was paused while plaintiff was committed in
 14 the state hospital, and all the criteria for Younger abstention are met. First, at a preliminary
 15 hearing, plaintiff was found incompetent to stand trial and committed to Napa State Hospital. If
 16 or when plaintiff’s competency is restored, his state criminal case will then proceed. In other
 17 words, plaintiff’s state criminal proceedings are ongoing because there is no final judgment, and
 18 the prosecution of the case will resume if competency is restored. Indeed, petitioner has now
 19 been returned to the Butte County Jail. Second, petitioner’s criminal proceedings implicate
 20 California’s important interest in the order and integrity of its criminal proceedings. See Kelly v.
 21 Robinson, 479 U.S. 36, 49 (1986) (“the States’ interest in administering their criminal justice
 22 systems free from federal interference is one of the most powerful of the considerations that
 23 should influence a court considering equitable types of relief”). Third, the California state courts
 24 provide an adequate forum in which plaintiff may pursue his claims. See Pennzoil Co. v. Texaco,
 25 Inc., 481 U.S. 1, 15 (1987) (“[A] federal court should assume that state procedures will afford an
 26 adequate remedy, in the absence of unambiguous authority to the contrary.”). When the state
 27 proceedings have concluded and his conviction becomes final, petitioner may seek federal habeas
 28 relief. See Fellows v. Matteson, 2020 WL 4805022 (C.D. Cal. May 18, 2020) (prisoner “may

1 seek federal habeas relief after his California state criminal proceedings . . . have concluded with
2 a final judgment of conviction.”). Fourth, granting plaintiff relief in this action would, in
3 practical effect, enjoin the state court criminal proceeding.

4 Because all Younger criteria are met, the undersigned cannot find that extraordinary
5 circumstances warrant intervention by this court. Plaintiff’s first and third claims are dismissed
6 without prejudice.

7 Plaintiff’s Second Claim

8 In his second claim, plaintiff alleges that “jail personnel” failed to protect plaintiff from an
9 assault by his assigned cellmate.

10 To allege a failure-to-protect claim under the Fourteenth Amendment, a pretrial detainee
11 must plead the following elements:

12 (1) The defendant made an intentional decision with respect to the
13 conditions under which the plaintiff was confined;

14 (2) Those conditions put the plaintiff at substantial risk of suffering
serious harm;

15 (3) The defendant did not take reasonable available measures to abate
16 that risk, even though a reasonable officer in the circumstances
17 would have appreciated the high degree of risk involved -- making
the consequences of the defendant's conduct obvious; and

18 (4) By not taking such measures, the defendant caused the plaintiff's
injuries.

19 Castro v. Cty. of Los Angeles, 833 F.3d 1060, 1071 (9th Cir. 2016), cert. denied sub nom. Los
20 Angeles Cty., Cal. v. Castro, 137 S. Ct. 831 (2017). In Castro, the Ninth Circuit made clear that
21 the four elements were intended to ensure “that liability will attach only in cases where the
22 defendant's conduct is more egregious than mere negligence.” Id. at 1071 n.4.

23 Here, plaintiff fails to identify a particular individual who was responsible for the alleged
24 violation. The complaint must allege in specific terms how each named defendant is involved,
25 demonstrating that there is some affirmative link or connection between a defendant’s actions and
26 the claimed deprivation. Rizzo v. Goode, 423 U.S. 362, 371 (1976). Also, plaintiff fails to
27 provide sufficient facts for the court to determine whether or not plaintiff can state a cognizable
28 failure to protect claim. However, in an abundance of caution, plaintiff is granted leave to amend.

1 If plaintiff chooses to amend to attempt to state a failure to protect claim, he should make sure he
 2 alleges facts addressing each of the four elements identified by the court in Castro, 833 F.3d at
 3 1071.

4 Claims as to Butte County or Butte County Jail

5 To state viable claims for municipal liability, plaintiff must plead “(1) that the plaintiff
 6 possessed a constitutional right of which [he] was deprived; (2) that the municipality had a policy;
 7 (3) that this policy amounts to deliberate indifference to the plaintiff’s constitutional right; and,
 8 (4) that the policy is the moving force behind the constitutional violation.” Dougherty v. City of
 9 Covina, 654 F.3d 892, 900 (2011) (internal quotation marks and citations omitted). Here,
 10 plaintiff failed to set forth specific charging allegations as to either Butte County or the Butte
 11 County Jail. Plaintiff entirely failed to identify any policies, practices, customs, or officials with
 12 policymaking authority that formed the “moving force” behind his alleged constitutional injuries.
 13 Plaintiff’s claims are dismissed. In an abundance of caution, plaintiff is granted leave to amend
 14 to include such claims provided he can set forth facts supporting the elements identified above.

15 Conclusion

16 Aside from the specific findings set forth above, the court finds the allegations in
 17 plaintiff’s complaint so vague and conclusory that it is unable to determine whether this action is
 18 frivolous or fails to state a claim for relief. The court determines that the complaint does not
 19 contain a short and plain statement as required by Fed. R. Civ. P. 8(a)(2). Although the Federal
 20 Rules adopt a flexible pleading policy, a complaint must give fair notice and state the elements of
 21 the claim plainly and succinctly. Jones v. Cmty. Redev. Agency, 733 F.2d 646, 649 (9th Cir.
 22 1984). Plaintiff must allege with at least some degree of particularity overt acts which each
 23 defendant engaged in that support plaintiff’s claim. Id. Because plaintiff failed to comply with
 24 the requirements of Fed. R. Civ. P. 8(a)(2), the complaint must be dismissed. The court will,
 25 however, grant leave to file an amended complaint.

26 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions
 27 about which he complains resulted in a deprivation of plaintiff’s constitutional rights. See, e.g.,
 28 West, 487 U.S. at 48. Also, the complaint must allege in specific terms how each named

defendant is involved. Rizzo, 423 U.S. at 371. There can be no liability under 42 U.S.C. § 1983 unless there is some affirmative link or connection between a defendant's actions and the claimed deprivation. Rizzo, 423 U.S. at 371; May v. Enomoto, 633 F.2d 164, 167 (9th Cir. 1980).

Furthermore, vague and conclusory allegations of official participation in civil rights violations are not sufficient. Ivey v. Bd. of Regents, 673 F.2d 266, 268 (9th Cir. 1982).

Further, plaintiff should ensure that all of his claims are related, as defined in the Federal Rules of Civil Procedure. Rule 21 of the Federal Rules of Civil Procedure provides:

Misjoinder of parties is not a ground for dismissing an action. On motion or on its own, the court may at any time, on just terms, add or drop a party. The court may also sever any claim against a party.

Fed. R. Civ. P. 21. Rule 20(a) provides that all persons may be joined in one action as defendants if "any right to relief is asserted against them jointly, severally, or in the alternative with respect to or arising out of the same transaction, occurrence, or series of transactions or occurrences" and "any question of law or fact common to all defendants will arise in the action." Fed. R. Civ. P. 20(a)(2). See also George v. Smith, 507 F.3d 605, 607 (7th Cir. 2007) ("Unrelated claims against unrelated defendants belong in different suits"). If unrelated claims are improperly joined, the court may dismiss them without prejudice. Fed. R. Civ. P. 21; 7 Alan Wright, Arthur Miller & Mary Kay Kane, Richard Marcus, Federal Practice and Procedure § 1684 (3d ed. 2012); Michaels Building Co. v. Ameritrust Co., 848 F.2d 674, 682 (6th Cir. 1988) (affirming dismissing under Rule 21 of certain defendants where claims against those defendants did not arise out of the same transaction or occurrences, as required by Rule 20(a)).

In addition, plaintiff is informed that the court cannot refer to a prior pleading in order to make plaintiff's amended complaint complete. Local Rule 220 requires that an amended complaint be complete in itself without reference to any prior pleading. This requirement exists because, as a general rule, an amended complaint supersedes the original complaint. See Ramirez v. County of San Bernardino, 806 F.3d 1002, 1008 (9th Cir. 2015) ("an 'amended complaint supersedes the original, the latter being treated thereafter as non-existent.'" (internal citation omitted)). Once plaintiff files an amended complaint, the original pleading no longer serves any

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function in the case. Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

In accordance with the above, IT IS HEREBY ORDERED that:

1. Plaintiff's request for leave to proceed in forma pauperis is granted.

2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. Plaintiff is assessed an initial partial filing fee in accordance with the provisions of 28 U.S.C. § 1915(b)(1). All fees shall be collected and paid in accordance with this court's order to the Sheriff of Butte County filed concurrently herewith.

3. Plaintiff's complaint is dismissed.

4. Within thirty days from the date of this order, plaintiff shall complete the attached Notice of Amendment and submit the following documents to the court:

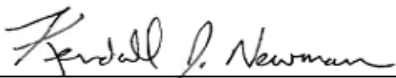
a. The completed Notice of Amendment; and

b. An original of the Amended Complaint.

Plaintiff's amended complaint shall comply with the requirements of the Civil Rights Act, the Federal Rules of Civil Procedure, and the Local Rules of Practice. The amended complaint must also bear the docket number assigned to this case and must be labeled "Amended Complaint."

Failure to file an amended complaint in accordance with this order may result in the dismissal of this action.

Dated: June 6, 2022


KENDALL J. NEWMAN
UNITED STATES MAGISTRATE JUDGE

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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JOSHUA MICHL,

Plaintiff,

v.

COUNTY OF BUTTE, et al.,

Defendants.

No. 2:22-cv-0689 KJN P

NOTICE OF AMENDMENT

Plaintiff hereby submits the following document in compliance with the court's order
filed _____.

DATED: _____

Amended Complaint

Plaintiff